

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

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CALVIN MARTINEZ,

Plaintiff,

v.

THOMAS CAUFIELD and  
OTA HOLDINGS, LLC D/B/A ONLINE  
TRADING ACADEMY OF DALLAS,

Case No. \_\_\_\_\_

Defendants.

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**NOTICE OF REMOVAL**

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To: Stephen C. Dries, Clerk of Court United States District Court Eastern District of Wisconsin 362 United States Courthouse 517 East Wisconsin Avenue Milwaukee, WI 53202	Gregory W. Lyons Christa D. Wittenberg O’Neil, Cannon, Hollman, DeJong & Laing S.C. 111 East Wisconsin Avenue, Suite 1400 Milwaukee, Wisconsin 53202 <i>Attorneys for Plaintiff</i>
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Defendants Thomas Caufield (“Caufield”) and OTA Holdings, LLC d/b/a Online Trading Academy of Dallas (“OTA”) (collectively “Defendants”), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this Notice of Removal (“Notice”) of this action from the Circuit Court for Washington County, Wisconsin, Case No. 2017CV000301 to the United States District Court for the Eastern District of Wisconsin. The grounds for removal are as follows:

**BACKGROUND**

1. Plaintiff Calvin Martinez filed this breach of contract and tort action on June 13, 2017. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served to date

upon Defendant, including Plaintiff's Complaint (the "Complaint"), are attached hereto as Exhibit 1.

2. Service of the Summons and Complaint was made on Defendants via personal service with Defendants receiving the Summons and Complaint on June 19, 2017. Accordingly, this Notice is being filed within 30 days after Defendant's first receipt of a copy of the initial pleading setting forth the claim for relief upon which the action is based, as required by 28 U.S.C. § 1446(b).

3. Other than the Summons and Complaint, Defendant has received no other process, pleadings, motions or orders.

#### **DIVERSITY OF CITIZENSHIP AND AMOUNT IN CONTROVERSY**

4. This Court has original jurisdiction of this action under 28 U.S.C. § 1332, and this action is removable under 28 U.S.C. § 1441(b), in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. Plaintiff is an individual domiciled in the city of Slinger in the State of Wisconsin. *See* Ex. 1, Complaint, ¶ 1. Therefore, Plaintiff is a citizen of the State of Wisconsin.

6. Defendant Caufield is, and was at the commencement of this action, an individual residing in the State of Texas. *See* Ex. 1, Complaint, ¶ 2.

7. Defendant OTA is, and was at the commencement of this action, a limited liability company with its principal place of business located in Texas. Defendant Caufield is the only member of OTA. As such, OTA is a citizen of Texas for purposes of diversity jurisdiction. *See Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998) (stating that a limited liability

company is a citizen of each state in which its members reside); *Signicast, LLC v. Fireman's Fund Ins. Co.*, 920 F. Supp. 2d 967, 969 (E.D. Wis. 2013) (same).

8. Accordingly, complete diversity of citizenship exists between the parties to this action.

9. In his Complaint, Plaintiff seeks a judgment for actual damages in the amount of at least ninety thousand dollars (\$90,000.00), punitive damages, attorneys' fees, and costs. (*See* Ex. 1, Complaint, ¶ 25 and pg. 8) (alleging that Defendants defaulted under the note by paying \$7,500.00 less per month than was owed since June 2016). It is well-established that in considering the amount in controversy for purposes of diversity jurisdiction, punitive damages are included in the total. *See, e.g., LM Ins. Corp. v. Spaulding Enters.*, 533 F.3d 542, 551 (7th Cir. 2008); *Williams v. Midwest Airlines, Inc.*, 2004 U.S. Dist. LEXIS 12409, \*3-4 (E.D. Wis. 2004). Plaintiff does not specifically identify the amount of punitive damages he seeks. However, regardless of punitive damages, the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

### **VENUE**

10. Under 28 U.S.C. § 1441(a), the State Court Action may be removed to the United States District Court for the Eastern District of Wisconsin, Milwaukee Division because it is the United States District Court for the district and division embracing the place where the State Court Action is pending.

### **PROPRIETY OF REMOVAL**

11. For the foregoing reasons, this Court has jurisdiction over this matter based on diversity of citizenship pursuant to 28 U.S.C. § 1332. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b).

12. Written notice of the filing of the Notice of Removal will be promptly served on the Plaintiff, and a copy will be promptly filed with the Clerk of the Circuit Court for Washington County, Wisconsin, pursuant to 28 U.S.C. § 1446(d).

**CONCLUSION**

WHEREFORE, Defendants Thomas Caufield and OTA Holdings, LLC d/b/a Online Trading Academy of Dallas hereby remove this action from the Circuit Court for Washington County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin.

Dated this 19th day of July 2017.

s/ Thomas M. Burnett  
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